

May 12, 2005

The Honorable Kathy Dent  
Sarasota County Supervisor of Elections  
Post Office Box 4194  
Sarasota, Florida 34230-4194

RE: DE 05-03  
Closed Captioning and Descriptive  
Narrative; § 98.122, Florida Statutes

Dear Ms. Dent:

This is in response to your request for an advisory opinion regarding various requirements of section 98.122, Florida Statutes. You are the Supervisor of Elections for Sarasota County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You have asked essentially the following questions:

1. In the context of section 98.122, Florida Statutes, what is meant by the term “descriptive narrative?”
2. Does section 98.122, Florida Statutes, require that a candidate television advertisement audibly state the required disclaimer language in addition to the ad textually displaying the required language?
3. What would be appropriate reasons that a candidate could provide in a letter to the qualifying officer as to why he or she could not comply with the closed captioning requirements of section 98.122, Florida Statutes?

Section 98.122, Florida Statutes, which became effective on July 1, 2004, reads as follows:

**Use of closed captioning and descriptive narrative in all television broadcasts.**--Each candidate, political party, and political committee must use closed captioning and descriptive narrative in all television broadcasts regulated by the Federal Communications Commission that are on behalf of, or sponsored by, a candidate,

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political party, or political committee or must file a written statement with the qualifying officer setting forth the reasons for not doing so. Failure to file this statement with the appropriate qualifying officer constitutes a violation of the Florida Election Code and is under the jurisdiction of the Florida Elections Commission. The Department of State may adopt rules in accordance with s. 120.54 which are necessary to administer this section.

As to Question 1, it is important to note that the Florida Legislature requires both closed captioning and descriptive narrative in section 98.122, Florida Statutes. As a result, we must presume that these terms were intended as separate and distinct requirements. However, the Florida Election Code, Chapters 97-106, Florida Statutes, does not provide a definition for the term “descriptive narrative.” Therefore, we must look to other appropriate resources for guidance.

According to the Federal Communications Commission (FCC), closed captioning is an assistive technology that allows persons with hearing disabilities to access television programming. Captioning displays the audio portion of programming as text superimposed over the video.

The FCC regulations related to closed captioning do not include a definition for the term “descriptive narrative.” However in Part 79 of the regulations, entitled “Closed Captioning and Video Description of Video Programming,” the FCC has defined the term “video description” as “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.” See 47 C.F.R. §79.3. This audio narrative is for the benefit of persons with visual disabilities. Although visually impaired persons can hear dialogue as it occurs, without video description they would not have the benefit of knowing what was occurring through purely visual images used to convey a message. In regular programming these might be images such as a plane taking off or an exterior shot of a house to show where the next scene is taking place. To put this in context, in political advertisements visual images such as the candidate shaking hands with a person who is a member of a group to which the advertisement is targeted (such as the military, the elderly or the disabled), flags flying, or a candidate standing with members of law enforcement might be used to convey a message even though no words are being spoken.

Therefore, relying on the federal definition of video description, the term “descriptive narrative” as used in section 99.122, Florida Statutes, means audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.

As to Question 2, in general, section 98.122, Florida Statutes, does not on its face require that a candidate television advertisement audibly state the required disclaimer language in addition to the ad textually displaying the required language. However, unless a statement is filed by the candidate, political party or political committee responsible for the ad setting forth the reasons for not doing so, section 98.122, Florida Statutes, would require that a video description, such as the fact that the screen includes a disclaimer statement along with its contents, be provided with the ad.

As to Question 3, section 98.122, Florida Statutes, provides no specific limitation on the reasons that can be given by a candidate, political party or political committee for not providing closed captioning or

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descriptive narrative. The section only requires that the reasons be filed in a written statement. Once filed, the statute provides no standard of review of the reasons stated therein.

#### SUMMARY

The term “descriptive narrative” as used in section 98.122, Florida Statutes, means audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue. In general, a candidate television advertisement is not required to audibly state the required disclaimer language in addition to textually displaying the required language in the advertisement. However, unless a statement is filed by the candidate, political party or political committee responsible for the ad setting forth the reasons for not doing so, section 98.122, Florida Statutes, would require that a video description, such as the fact that the screen includes a disclaimer statement along with its contents, be provided with the ad. Once the statement is filed, the statute provides no standard of review of the reasons stated therein.

Sincerely,

Dawn K. Roberts  
Director, Division of Elections

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DKR/SDL/nlw